



TOWN OF YARMOUTH  
BOARD OF APPEALS  
DECISION

**FILED WITH TOWN CLERK: May 18, 2018**

**PETITION NO: #4742**

**HEARING DATE: May 10, 2018**

**PETITIONER: Sunny M. Bell and Patricia A. Dotson**

**PROPERTY: 54 Rita Avenue, South Yarmouth, MA  
Map & lot#: 0079.55; Zoning District: R-40  
Book/Page: 27495/263**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Dick Martin, Thomas Nickinello, Gerald Garnick and Tom Baron (nonvoting) Alternate.**

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The Petitioners are Sunny M. Bell and Patricia A. Dotson, both of 54 Rita Avenue, South Yarmouth, MA which property is located in an R-40 Zoning District. The Petitioners seek to restore a family related apartment within the structure they currently occupy. This property had been the subject of a previous grant of a Special Permit for a family related apartment. The decision on the prior grant of a Special Permit (Decision # 3794) provided that the rights under the Special Permit would be void when the Petitioner sold the property and no longer continues to occupy it as their residence. The current owners obtained their interest in the property by way of a quitclaim deed dated June 26, 2013 and duly recorded at the Barnstable Registry of Deeds. The Deputy Building Commissioner, James Brandolini, forwarded to the current Petitioners correspondence dated December 15, 2017 advising them that they were not compliant with the requirements of the zoning bylaws and that it should not be occupied as a 2 family dwelling without further Zoning Board approval. Their Petition seeks this approval.

Despite the clear record of the limitations to the prior Special Permit grant, the Board accepted that the Petitioners were acting in good faith in their belief that they each could occupy one of the 2 house units at the property. Nevertheless, the requirements of the previous grant of Special Permit must be followed. The Petitioners are mother and daughter and, so, meet the requirement that one of the units be occupied by a family member. In fact, a Family Related Apartment Affidavit dated March 21, 2018 had been filed with the town previous to the Board's consideration of this Petition. The Board noted that the apartment to be occupied by Patricia Dotson would consist of 599 ft.<sup>2</sup> with the principal residence being that of the Petitioner, Sunny

Bell, daughter of Patricia. While the parties may occupy the premises as co-owners, they are not allowed to occupy 2 separate residences within the structure. As each does occupy a separate living accommodation, this is why relief is needed.

The Board felt that the Petitioners requested relief met the criteria of the bylaw and that no undue hazard, nuisance or congestion would result from the grant of relief nor cause any substantial hardship to the existing or future character of the neighborhood or town.

Mr. Igoe moved and Mr. Martin seconded to grant the Petition for relief upon the conditions as follows: 1.) That the Petitioners make application with the town for the right to use the property inclusive of the separate, family related apartment; 2.) That the Petitioners have the property inspected by the Board of Health/Building Department as may be required; and, 3.) That all town requirements be met inclusive of the understanding that this grant is for the benefit of this Petitioner only and that upon the sale of the premises or when Sunny Bell may cease to occupy the premises, then the separate, family related apartment shall no longer be permitted and the Special Permit shall be void. The Board voted unanimously in favor of this Motion with the stated conditions and the Special Permit was, therefore granted.

Incorporated hereto by reference are the Family Related Apartment Affidavit and the Declaration Of Covenants for a Family Related Accessory Apartment.

**No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw, MGL c40A §9)**

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Steven DeYoung, Chairman